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Dockets Management Branch
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CITIZEN PETITION

Pursuant to 21 C.F.R. §§ 10.20 and 10.30, Pfizer Inc ("Pfizer") submits this Citizen Petition requesting that FDA issue non-approvable letters to any generic drug manufacturer that has failed to comply with the patent certification and notification requirements of 21 U.S.C. § 355(j)(2)(A)(vii) in connection with an application to market a generic version of Pfizer's drug Neurontin® (gabapentin). As set forth herein, Pfizer has reason to believe that Geneva Pharmaceuticals, Inc., Zenith Goldline Pharmaceuticals, Inc., Danbury Pharmacal Inc., Eon Labs Manufacturing, Inc., ESI Lederle Inc., and Watson Laboratories, Inc., may have failed to comply with these requirements.

A. ACTION REQUESTED

Pfizer requests that FDA issue a non-approvable letter respecting any abbreviated new drug application ("ANDA") referencing Neurontin® that does not contain required certifications for all Neurontin® patents listed in *Approved Drug Products With Therapeutic Equivalence Evaluations* (20th ed. 2000) ("the Orange Book"). Pfizer also requests that FDA issue a non-approvable letter to any applicant that has failed to notify Pfizer, as required by law, of the filing of a "paragraph IV" certification challenging a listed patent for Neurontin®.

B. STATEMENT OF GROUNDS

1. Factual Statement

Neurontin® is marketed by Pfizer in capsule and tablet form pursuant to approved new drug application ("NDA") Nos. 20-235 and 20-882.[1] In its NDAs, Pfizer identified three relevant patents covering the composition and use of Neurontin®: U.S. Patent Nos. 4,087,544 [this patent expired on July 16, 2000], 4,894,476 ("the '476 patent") and 5,084,479 ("the '479 patent"). On April 25, 2000, Pfizer listed a fourth patent, U.S. Patent No. 6,054,482 ("the '482 patent"), which was issued by the Patent and Trademark Office on that same date.

Prior to April 2000, when Pfizer listed the '482 patent, nine ANDA applicants had notified Pfizer that they were seeking approval to market generic versions of Neurontin® and intended to commence marketing prior to expiration of the '476 and '479 patents.[2] Pfizer received notifications from: Purepac Pharmaceutical Co. (ANDA Nos. 75-350 and 75-694), Torpharm, Inc. (ANDA No. 75-360), Teva Pharmaceutical Industries, Ltd. (ANDA Nos. 75-435 and 75-827), Geneva (ANDA No. 75-428), Zenith Goldline (ANDA No. 75-477), Danbury (ANDA No. 75-485), Eon Labs (ANDA No. 75-539), ESI Lederle (ANDA No. 75-544), and Watson Laboratories (ANDA No. 75-550). Within 45 days of receiving the notifications from Purepac and Torpharm, Pfizer commenced patent litigation against those companies, which litigation is ongoing. Pfizer did not bring infringement suits against the other seven ANDA applicants.[3]

As noted above, on April 25, 2000, Pfizer notified FDA of the issuance of the '482 patent. FDA listed the '482 patent in Cumulative Supplement 5 (May 2000) to the Orange Book. To date, however, only three of the nine ANDA applicants—Purepac, Torpharm, and Teva—have provided Pfizer with notifications that they are challenging the '482 patent.[4] Pfizer has received no such notification from Geneva, Zenith Goldline, Danbury, Eon Labs, ESI Lederle, Watson Laboratories, or any other ANDA applicant.

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[1] The sponsor of the NDAs was Warner-Lambert Company. As the result of a recent merger, Warner-Lambert is now part of Pfizer. For simplicity, this petition will refer to both companies collectively as "Pfizer."

[2] All of the ANDA applicants stated that they had filed "paragraph IV" certifications pursuant to 21 U.S.C. § 355(j)(2)(A)(vii) challenging the '476 patent. Regarding the '479 patent, the applicants filed "paragraph IV" certifications and/or certified pursuant to 21 U.S.C. § 355(j)(2)(A)(viii) that the '479 patent was not applicable to their proposed products.

[3] Geneva has brought suit for a declaratory judgment of non-infringement of the '476 patent.

[4] Pfizer brought infringement actions against Purepac and Torpharm within 45 days of receiving their paragraph IV notices regarding the '482 patent, and expects to bring a timely suit against Teva as well.

Thus, it appears that none of these six applicants has filed required certifications regarding the '482 patent.

It is possible[5] that some of these applicants have filed paragraph III certifications, asserting that they will not market their proposed generic products until the '482 patent expires in April 2017. In that event, and if there are no other pending ANDAs respecting Neurontin® that lack patent certifications, this petition would be moot.

Pfizer believes it more likely, however, that one or more of these six ANDA applicants have not filed required certifications regarding the '482 patent, or have filed paragraph IV certifications but have failed to notify Pfizer of such filings. Pfizer would be most surprised to learn that of the nine ANDA applicants seeking to market generic equivalents of Neurontin®--all of which have indicated their intent to do so before the expiration of the '476 and '479 patents--six have decided to forego any challenges to the '482 patent and to accept without any argument that they cannot launch their proposed products until April 2017. Pfizer suspects, therefore, that these applicants either have not filed certifications at all, or have filed paragraph IV certifications but have failed to provide Pfizer with the required notification of the filing. In either event, as discussed below, the applicants are not complying with the statutory and regulatory ANDA filing requirements, and thus their ANDAs should be declared not approvable.

2. Legal Statement

Section 355(j)(2)(A)(vii) of Title 21, United States Code, requires an ANDA application to contain a certification "with respect to each patent" listed in the Orange Book. An applicant must make one of four specified certifications: (1) there is no listed patent ("paragraph I" certification); (2) the listed patent has expired and thus poses no potential obstacle to generic marketing ("paragraph II" certification); (3) the applicant will not market its proposed generic drug until a future specified date on which the patent will expire ("paragraph III" certification); (4) the patent "is invalid or will not be infringed" by the manufacture, use, or sale of the generic product ("paragraph IV" certification). 21 U.S.C. § 355(j)(2)(A)(vii); *see also* 21 C.F.R. § 314.94(a)(12)(i)(A). If an applicant submits a paragraph IV certification challenging a listed patent, the applicant must notify the patentee and NDA sponsor about the challenge and the grounds therefor, and must file to the ANDA proof that notice was made and received. 21 U.S.C. § 355(j)(2)(B)(iii); 21 C.F.R. §§ 314.94, 314.95(b), (e).

The type of certification determines the earliest allowable date on which an ANDA may be effectively approved. When the applicant certifies that there is no patent

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[5] Because ANDA filings are confidential, Pfizer cannot determine for itself whether any ANDA applicant has filed a certification, or what kind of certification the applicant has filed.

or that all listed patents have expired (paragraph I or paragraph II certification), the approval is effective when issued. In the case of a paragraph III certification that identifies the date of patent expiration, approval is not effective until that date. When the applicant has challenged a patent by filing a paragraph IV certification and serving notice on the NDA sponsor of the grounds for the challenge, approval must be withheld for 45 days while the NDA sponsor decides whether to sue for patent infringement. If the sponsor brings suit within the 45-day period, approval is stayed for 30 months from the receipt of notice, or for such other time as required by court order. 21 U.S.C. § 355(j)(5)(B); 21 C.F.R. § 314.107(b).

Because the date of approval of an ANDA depends on the type of patent certification the ANDA contains, an ANDA that lacks any certification regarding a listed patent cannot be approved. "If [the] patent information is not included in the application, the ANDA . . . will be considered incomplete and will be the subject of a not approvable letter." FDA, Letter to Industry of October 11, 1984, at 4 (reprinted at http://www.fda.gov/cder/guidance/old012fn.pdf). FDA also cannot give effective approval to an ANDA containing a paragraph IV certification challenging a listed patent if the ANDA applicant has failed to serve on the NDA sponsor the required notification stating the grounds for the challenge. As noted above, the effective date of an ANDA containing a paragraph IV certification is keyed to the NDA sponsor's receipt of the required notification. The statute makes no provision for approving an ANDA when the NDA sponsor has not received notification about a paragraph IV certification.

The '482 patent issued on April 25, 2000, and was listed in the May 2000 supplement to the Orange Book. In June 2000, Purepac, Torpharm, and Teva all filed paragraph IV certifications and served notifications regarding this patent. Now, several months after the patent's issuance, there is no justification for any other ANDA applicant's failure to file a certification regarding the '482 patent. Any ANDA application that does not contain a certification regarding the '482 patent is incomplete and should, as FDA stated in its October 11, 1984 guidance, "be the subject of a not approvable letter." Thus, FDA should issue non-approvable letters to any of the generic manufacturers that have failed to file certifications regarding the '482 patent, and should suspend review of such manufacturers' ANDAs.

Even if an ANDA applicant already has filed a paragraph IV certification challenging the '482 patent, the ANDA is not approvable so long as the applicant fails to provide notification to Pfizer about the certification in the manner required by statute.[6]

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[6] Notification of a paragraph IV certification filed to a previously-submitted ANDA must be made concurrently with the filing of the certification, and proof of such notification must be filed to the ANDA. 21 U.S.C. § 355(j)(2)(B)(iii); 21 C.F.R. § 314.95(d), (e). Thus, if any of the six ANDA applicants from whom Pfizer has not received notice has filed a paragraph IV certification challenging the '482 patent, that applicant's ANDA is incomplete and in violation of the statutory and regulatory requirements.

The only paragraph IV notifications Pfizer has received regarding the '482 patent are notifications from Purepac, Torpharm, and Teva. FDA should issue non-approvable letters to any and all other generic manufacturers that have filed paragraph IV certifications challenging the '482 patent, and should suspend review of such manufacturers' ANDAs.

The failure of any ANDA applicant to file patent certifications and/or to notify Pfizer about any paragraph IV certification regarding the '482 patent disrupts the orderly process for patent litigation established under section 355(j)(2)(A)(vii). The statutory system of patent certification and notification is intended to expedite the identification and resolution of disputed issues regarding patent coverage, and thus promote the important public interests in protecting intellectual property rights while facilitating a market for generic drugs. An ANDA applicant should not be permitted to "game" this system by the subterfuge of withholding required certifications or delaying notification to the NDA sponsor that the applicant intends to challenge a listed patent. FDA should take prompt action to enforce the statutory patent requirements by explicitly warning ANDA applicants that their ANDAs will be neither reviewed nor approved so long as they have not satisfied the statutory certification and notification requirements.

III. CONCLUSION

For the foregoing reasons, Pfizer requests that FDA issue non-approvable letters to any and all ANDA applicants that have not filed certifications regarding the '482 patent, and to any ANDA applicants other than Purepac, Teva, and Torpharm that have filed paragraph IV certifications challenging the '482 patent.[7] Pfizer also requests that FDA suspend review of such applicants' ANDAs.

IV. ENVIRONMENTAL IMPACT

Pursuant to 21 C.F.R. § 25.31(a), no environmental assessment of the requested action is required.

V. ECONOMIC IMPACT

Pursuant to 21 C.F.R. § 10.30(b), economic impact information is required only when requested by the Commissioner.

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[7] Teva's paragraph IV notification regarding the '482 patent addresses only gabapentin tablets (ANDA No. 75-827). Because Pfizer has not received a paragraph IV notification regarding gabapentin capsules (ANDA No. 75-435), FDA should issue a non-approvable letter to Teva with respect to that ANDA.

VI. CERTIFICATION

The undersigned certifies that, to the best knowledge and belief of the undersigned, this petition includes all information and views on which the petition relies, and that it includes representative data and information known to the petitioner which are unfavorable to the petition.

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